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10/799,114

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08/07/2009

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: KENNETH S. BLOOM, STEPHEN A. EILERTSON and
WENDELL D. WILLINGHAM

Application No. 10/799,114
Technology Center 1600

Mailed: August 7, 2009

Before QUITA GOULD *Supervisory Paralegal Specialist*
GOULD, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 9, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on December 3, 2007. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 C.F.R. § 41.43(a)(1) and MPEP § 1208, part II.

EXAMINER'S ANSWER: GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims, as provided in the Examiner's Answer, mailed October 12, 2007, under the heading "Grounds of Rejection to be Reviewed on Appeal," is unclear. The grounds of rejection to be reviewed on appeal, as provided in the Examiner's Answer must be consistent with the last Office Action of record, including any Advisory Action responsive to any after-final submissions. Furthermore, each ground of rejection to be reviewed on appeal must be identified and any new ground of rejection must be provided under the separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the Technology Center (TC) Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) §§ 1207.02 and 1207.03 (8th ed. Rev. 6, July 2008) for details.

A review of the Examiner's Answer finds a new ground of rejection that has not been provided with the required heading "New Grounds of Rejection" and which does not include the approval of the TC Director or his/her designee. Specifically, claim 12 was not listed in any ground of rejection until the Examiner's Answer, filed October, 12, 2007. Claim 12

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was added to the 102(b) rejection of claims 1, 3-5, 7, and 12. This constitutes a new ground of rejection.

Clarification of the record is required for all grounds of rejection to be reviewed on appeal for all claims.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- (1) consider and acknowledge receipt of the Reply Brief, filed December 3, 2007, as indicated above;
- (2) vacate the Examiner's Answer, mailed October 12, 2007;
- (3) generate a new Examiner's Answer setting forth the correct grounds of rejection and to correct other sections of the Answer, as may be required;
- (4) include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and
- (5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/bim

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